



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Edward Skernolis
Waste Management
North Building, Suite 300
601 Pennsylvania, NW
Washington, DC 20004

Dear Mr. Skernolis,

We were pleased to meet with you on April 22, 1998 to discuss your questions regarding section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). This letter is intended to clarify some issues that arose in our meeting pertaining to your waste management facilities that include both solid waste and hazardous waste units. You also asked a question concerning toxic chemicals in lab packs. As you know, the Agency recently added seven new industry sectors to those facilities subject to EPCRA section 313. (May 1, 1998; 62 FR 23834) One of the newly added industry sectors includes facilities in Standard Industrial Classification (SIC) code 4953 which are regulated under subtitle C of the Resource Conservation and Recovery Act (RCRA).

In our April meeting, you presented us with three examples of Waste Management company operations. All three company operations are classified in SIC code 4953. Your first example addresses the CID Recycling and Disposal Facility that encompasses several RCRA subtitle C hazardous waste and subtitle D municipal solid waste management units. Specifically this company site has: (a) one landfill that accepts hazardous waste generated on-site for disposal; (b) one landfill that previously accepted hazardous wastes, has postponed RCRA closure of the unit, and currently accepts municipal solid waste, (c) a few landfills that were closed prior to the effective date of the RCRA subtitle C regulations; and (d) other non-RCRA regulated units. Under EPCRA section 313, a facility consists of "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person)..." (40 CFR § 372.3) The CID Recycling and Disposal Facility, which is located on a single site and has one owner, meets this EPCRA section 313 definition of facility. Because at least one unit at this facility is regulated by RCRA subtitle C and the facility's operations are classified in SIC code 4953, for the purposes of EPCRA section 313, the whole facility is considered to be in SIC code 4953 (regulated under RCRA subtitle C). As such, Waste Management must consider all non-

exempted activities at the facility, for threshold determinations and release and other waste management reporting. The owner or operator should be sure to include any information the facility may have concerning toxic chemicals at the solid waste units of the facility as well as at the hazardous waste units.

In your second example, the Chemical Waste Management of the Northwest, a RCRA permitted subtitle C facility, shares a common fence line with the Columbia Ridge Landfill and Recycling Center, a RCRA subtitle D facility that landfills municipal solid waste and non-hazardous special waste. Each of these operations has its own waste management permits and are considered distinct entities. However, they are both operated by the same company and are owned by the same parent company. Because Chemical Waste Management of the Northwest and the Columbia Ridge Landfill and Recycling Center are located on adjacent sites and have the same operator, as well as owner, they comprise one facility. As such, the units at both waste management operations are part of one facility under EPCRA section 313 and Waste Management must consider their combined activities for threshold determinations and release and other waste management reporting.

Your final example involves a RCRA subtitle C hazardous waste landfill facility in SIC code 4953 that is planning to construct a RCRA subtitle D disposal cell on-site. You inquire as to whether or not this new cell would affect the applicability of EPCRA section 313 at the site. As explained in the answer to your first question, because at least one of the cells is regulated by RCRA subtitle C, for the purposes of reporting under EPCRA section 313, the entire facility is considered to be in SIC code 4953 (regulated under RCRA subtitle C). Therefore the whole facility, including both the hazardous waste and non-hazardous waste operations, is subject to the EPCRA section 313 threshold determinations and release and other waste management reporting requirements.

You should note that there may be instances where facilities have no information regarding toxic chemicals in materials received from off-site for disposal in municipal waste landfills. As explained in the preamble to the May 1, 1997 Federal Register notice, EPA provides guidance in the Forms and Instructions for making threshold determinations on the components of mixtures, which can be applied to wastes, even though wastes are not mixtures. (62 FR 23834 at 23870) As stated in the Forms and Instructions, when the facility has no concentration information about the waste, "you do not have to consider the amount of the toxic chemical present in th[ese] mixture[s] for purposes of threshold and release determinations." (Toxic Chemical Release Inventory Reporting Forms and Instructions, Revised 1997 Version; pp.16) If a facility does have readily available data or can make reasonable estimates about EPCRA section 313 toxic chemicals in these wastes, the facility must use this information in making threshold determinations and release and other waste management calculations.

In addition to your inquiries concerning the definition of facility, you had a question concerning compliance with EPCRA section 313 for RCRA subtitle C regulated treatment, storage and disposal facilities (TSDFs) managing lab packs. Specifically you explained that at least one of your facilities receives about 24,000 lab packs a year containing 0.5 milliliter of

laboratory wastes. These containers are incinerated at your facility. Under a state program, the facility analyzed two weeks of data and extrapolated the information to obtain annualized data. You estimate that the data analyzed would account for approximately five percent of the data available for the year. You stated that calculating the annual quantities of EPCRA section 313 toxic chemicals in these very small vials is extremely difficult.

To the extent that you have *readily available* data concerning toxic chemicals on-site, you must use this information. As stated in EPCRA section 313 (g)(2):

the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentrations, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulations.

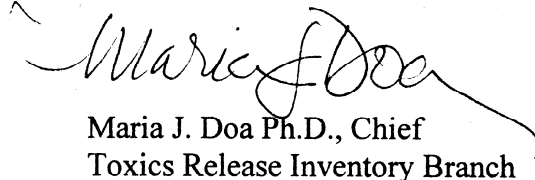
If the facility believes that analysis of the five percent of the lab packs is the only readily available data concerning toxic chemicals in these wastes and is representative of the entire year, the facility may choose to extrapolate from this five percent to obtain annualized data. To the extent the facility determines that the information on the 95 percent of the lab packs not analyzed is not readily available, the facility should make certain that they document their decision making. You may also wish to consider Q&A #53 from our recently published Emergency Planning and Community Right-To-Know Act Section 313 Addendum to the Guidance Documents for the Newly Added Industries (EPA 745-B-98-001, February 1998) as included below.

Q53. Is it appropriate for a TSDF to develop an average concentration for a section 313 chemical contained in thousands of different waste streams managed by the facility, and then use that average as a basis of threshold determination? If so does EPA have a recommended approach for developing such an average?

A53. EPCRA allows facilities to use "readily available data" to provide information required under Section 313. When data are not readily available, EPCRA allows facilities to use "reasonable estimates" of the amounts involved. A facility must use its best judgment to determine whether data are "readily available." Thus, with regard to use of average concentration levels, a facility must use its best judgment to decide whether the raw data from which it might base any average concentration level are readily available. In any event, a facility should carefully document its decision making. For example, if a facility decides to use average concentration levels, it should document why the raw data from which the averages are based are not readily available, how it arrived at any average concentration level used, and why the average concentration level is a "reasonable estimate" of the amount of the toxic chemical in the waste stream. EPA does not have a recommended approach for determining average concentration levels.

I hope this information is helpful to you in making threshold determinations and release and other waste management calculations for section 313 of EPCRA. If you have any other questions, or desire further information, please call me at 202.260.9592 or Sara Hisel McCoy of my staff at 202.260.7937.

Sincerely

A handwritten signature in black ink, appearing to read "Maria J. Doa", with a long, sweeping flourish extending to the right.

Maria J. Doa Ph.D., Chief
Toxics Release Inventory Branch

cc: Tim Crawford, TRIB
Robert Wing, OGC